

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WILLIAM JAMES GAERTNER, Jr.,

Petitioner,

v.

CASE NO. 05-71940
HON. LAWRENCE P. ZATKOFF

CAROL HOWES,

Respondent.

/

**ORDER DENYING CERTIFICATE OF APPEALABILITY AND REQUEST TO
PROCEED IN FORMA PAUPERIS**

This matter is before the Court for a determination as to whether a certificate of appealability should issue in this matter. “In a habeas corpus proceeding in which the detention complained of arises from process issued by a state court, or in a 28 U.S.C. § 2255 proceeding, the applicant cannot take an appeal unless” a certificate of appealability is issued under 28 U.S.C. § 2253(c). FED. R. APP. P. 22(b)(1). A certificate of appealability may be issued “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). In order to make such a substantial showing, a petitioner must show that “reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Petitioner raised four issues in his petition for habeas corpus:

1. Unlawful arrest;
2. Unlawful search and seizure;
3. Ineffective assistance of counsel; and
4. Insufficient evidence for conviction.

The Court has reviewed each issue, as well as the supporting materials. The original

petition was denied because it was filed past the one year limitations period mandated by 28 U.S.C. § 2244(d)(1). The Court declines to issue a certificate of appealability because reasonable jurists would not find this Court's assessment of petitioner's claims to be debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). The Court will also deny Petitioner leave to appeal in forma pauperis, because the appeal would be frivolous. *Dell v. Straub*, 194 F. Supp. 2d 629, 659 (E.D. Mich. 2002).

Accordingly, IT IS ORDERED that no certificate of appealability shall issue in this matter, and Petitioner's request to proceed in forma pauperis is DENIED.

IT IS SO ORDERED.

s/Lawrence P. Zatkoff
LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

Dated: July 27, 2006

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Order was served upon the attorneys of record by electronic or U.S. mail on July 27, 2006.

s/Marie E. Verlinde
Case Manager
(810) 984-3290